

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: INCREASING THE PENETRATION RATE
FOR DISCOUNTED ELECTRIC, GAS AND
TELEPHONE SERVICE**

DTE 01-106

**ADDITIONAL COMMENTS OF THE MASSACHUSETTS COMMUNITY ACTION
PROGRAM DIRECTORS ASSOCIATION AND
THE MASSACHUSETTS ENERGY DIRECTORS ASSOCIATION**

November 14, 2002

I. INTRODUCTION

The Department opened the present proceeding to investigate ways to increase participation among eligible low-income households in the utility rate discount programs mandated by G.L. c. 164, §1F(4). The Department has already solicited initial and reply comments from broad range of interested parties; established working groups that explored a number of approaches towards increasing participation; and convened an informal meeting on September 17, 2002 to receive reports from the working groups.

The Department now seeks comments on two questions, the first regarding changes to application forms used by the Department of Transitional Assistance (“DTE”) and Division of Medical Assistance (“DMA”) that would increase applications for the discount rates, the second regarding the costs and benefits of using a third-party administrator to increase participation, including the potential advantages of drawing on a client database compiled by MassCARES, a project of the Executive

Office of Health and Human Services.

The Massachusetts Community Action Program Directors Association and the Massachusetts Energy Directors Association (collectively, “CAPs”) appreciate the attention that the Department has given to the issue of participation in discount rate programs. While the legislature mandates that these rates be offered, it is only through the oversight of the Department and the efforts of the utility companies and various non-profit and government agencies that deserving households actually become enrolled. The Department’s leadership will result in many more eligible households receiving discount assistance.

The CAPs submit their additional comments below.

II. THE DEPARTMENT SHOULD BE CAUTIOUS ABOUT REQUIRING DTA/DMA APPLICANTS TO APPLY FOR THE DISCOUNTS AS THIS MAY NOT MEASURABLY INCREASE ENROLLMENT BUT MAY RAISE DIFFICULT LEGAL ISSUES

The Department asks for comments in response to a proposal from the working groups that new applicants for assistance provided through DTA or DMA should be allowed, as part of the application process, to authorize release of information to the utilities that operate the discount programs, thereby facilitating greater enrollment. This proposal is built on the existing model used by local agencies that administer the Low-Income Home Energy Assistance Program (“LIHEAP”). In LIHEAP, clients must sign a “Mass. Energy Assistance” application form that includes the following language, in order to get assistance:

I have read the section of the authorization on the back of this application concerning

information sharing for heating and utility discounts and/or benefits and I agree.¹

The additional information on the back of the form reads as follows:

I authorize the agency to provide my heating company/utility and any secondary energy company/utility with information concerning my Fuel Assistance application if this could result in a discounted heating/energy bill.

I further authorize the agency to share my name and address, identifying me as a Fuel Assistance recipient, with my telephone, water and other supplier/company/utility if this could result in a discount or other benefit from the supplier/company/utility. The agency may also request that I supply account number information for this purpose.

I understand that this authorization is for my benefit and I do not have to agree in order to receive assistance under this application. I have read the above and agree, or if I disagree I will so indicate on the front of this application in accordance with instructions from the agency.

This LIHEAP has two features very relevant to the Department's request for comments. First, the LIHEAP applicant does not have to check a box or require the applicant to take any action, other than signing the LIHEAP application itself, in order to authorize release of information to a gas, electric, phone or other company offering a discount or other benefit. This eliminates the possibility that an applicant who wishes to apply for the discount will successfully complete the application for LIHEAP but inadvertently overlook authorizing the release of information. Second, applying for the discount is not a requirement of applying for LIHEAP. In fact, the applicant is given notice of the right not to authorize release of information.

In practice, the CAPs are aware of no individuals who have refused to authorize release of information to utilities in recent years. There were a few such cases dating back to the initial addition of this authorization language to the LIHEAP application, when clients perhaps were less aware of the

¹ The CAPs append a copy of the application form to these comments.

utility discount programs. At the present time, the CAPs believe that no households object to the release of information. Thus, the LIHEAP model fully achieves the goal of enrolling LIHEAP applicants onto the discounts without forcing LIHEAP clients to apply for the discount.

The CAPs urge the Department to be wary of protocols that would require DTA or DMA applicants to authorize the release of eligibility information to utilities as a condition of receiving assistance from DTA or DMA. Based on the LIHEAP model, which involves purely voluntary consent yet still succeeds in enrolling virtually every LIHEAP household on the discount rates, there is little to be gained by making consent to release of information a condition of applying for DTE or DMA assistance. Yet imposing this requirement may create unnecessary legal issues for the administering agencies, as explained below.

The federal food stamp statute requires administering state agencies to restrict the disclosure of information obtained from applicant households to persons directly connected with food stamps administration or law enforcement. 7 USC § 2020(e)(8). The federal statute governing the Temporary Assistance for Needy Families block grant also requires administering state agencies to include in the state plan documentation that reasonable steps will be taken to restrict the use and disclosure of information about individuals and families receiving assistance under the program. 42 USC § 602(a)(1)(A)(iv). The Fair Information Practices Act (FIPA), G.L. c. 66A, § 2, prohibits agencies that maintain personal data from allowing any other agency or individual not employed by that agency to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of c. 66A, unless approved by the data subject.

There is no doubt that DTA or DMA can release information if authorized to do so by the

applicant for or recipient of assistance. G.L. c. 66A, § 2(c). However, it is questionable that the agencies can require such consent as a condition of assistance. States are constrained in their ability to impose additional conditions of eligibility for assistance in federal programs not explicitly or implicitly authorized by federal law. *See generally King v. Smith*, 392 U.S. 309 (1968); *Townsend v. Swank*, 404 U.S. 282 (1971). If DTA or DMA requires consent to release information to utilities as a condition of getting assistance, applicants for assistance may argue that this circumvents the requirements of federal and state confidentiality statutes. *See, e.g., Smith v. Commissioner of Transitional Assistance*, 431 Mass. 638 (2000) (striking down regulation that preempted Commissioner's consideration of statutory factors for determining whether benefits were to be extended as inconsistent with statutory language and purpose).

Further, the food stamp regulations specifically provide that “[i]f a State agency has a procedure that allows applicants to apply for the food stamp program and another program at the same time, the State agency shall notify applicants that they may file a joint application for more than one program or they may file a separate application for food stamps independent of their application for benefits from any other program.” 7 CFR § 273.2(b)(3). Again, applicants for food stamps could argue that they cannot be required to apply for the discount program as a condition of applying for food stamps.

Whether or not these arguments would prevail in court, there is no reason to open these issues for debate. The LIHEAP experience makes it clear that applicants will voluntarily release information to utilities. There is no need to make release of information an application requirement. The Department's proposal is well-intentioned, and the CAPs appreciate the Department's willingness to

explore a variety of options to increase participation on the discount rates. In this instance, however, there is almost no upside advantage in terms of greater discount rate enrollment and a substantial downside risk of legal disputes or controversy. The CAPs recommend use of the LIHEAP model of including release authorization language on DTA and DMA application forms, with the applicant's signature to the application acting as acknowledgment of the consent to release.

III. THE CAPS SUPPORT THE CONCEPT OF A CENTRAL ENTITY ACTING AS A CLEARINGHOUSE TO FACILITATE ENROLLMENT

The Department asks the parties to comment on:

moving to a model where a central entity gathers relevant information from Community Action Programs/grantees and government agencies (DTA, DMA, etc.) on eligible customers for the discount rates and shares this information with utilities.

The Department also invites comment on:

whether MassCARES [a program within the Executive Office of Health and Human Services] would be a feasible Central Information Storehouse for an automated matching program for the discount rate.

The CAPs fully support the model of a central entity gathering information that can be shared with utilities in order to facilitate higher enrollment on the discount rates. They actively promoted this idea in the workshops and suggested it to the Department. Texas has been using a third party administrator since the inception of its low income discount program at the beginning of this year. Since then, 615,000 customers have been enrolled (through August, 2002.) While Texas had no discount rate program prior to this year and the large number of people enrolled is therefore not so surprising, the Texas experience shows that a third party administrator who is given adequate authority and access to

information can do a very good job of identifying eligible households and moving them onto discount rates. The Texas program had some initial start-up problems, as is true with most new programs, but a broad range of interested parties now see it as a success.²

The CAPs cannot readily quantify the costs and benefits of moving to a third party administrator model. The CAPs suggest that developing credible estimates of the costs and benefits would require further meetings of the working groups, with direction from the Department that relevant parties (utilities, CAPs, DTA, DMA) develop and share information about: existing costs of identifying and enrolling eligible households; a conceptual design and estimated costs of operating a third party administrator system; and estimates of the number of new households that might be enrolled. However, based on the Texas third party administrator experience, where costs have not been seen as a significant problem, and the CAPs' own experience as program administrators, the CAPs believe that any new costs of moving to a third party administrator model in Massachusetts system would be outweighed by savings utilities would gain by reducing (but not eliminating) the resources currently devoted to identifying and enrolling eligible households. With approximately one dozen regulated electric and gas companies operating discount rate programs and each utility currently devoting significant staff time and information management resources to the effort, savings at utilities could easily reach hundreds of thousands of dollars each year even if a third party administrator only allows each utility to reduce current staffing by a small fraction of one FTE (full-time equivalent) position. Through the workshop process, the CAPs became fully aware of the extent to which each regulated gas and

² If the Department is interested, the CAPs can provide copies of recent reports from the Texas Commission on the operation of the low-income discount administrator.

electric company currently devotes the time of highly skilled personnel to identifying and certifying eligible households. Were a third party administrator to identify income-eligible households for the utilities and provide this information to them in a regular and consistent electronic format, the utilities' current responsibilities would be greatly reduced. At the present time, each utility has separately developed its own information systems for enrolling households; each government agency has set up its own formats for maintaining data on clients and disseminating information to utilities; and the need for periodic exchanges of information between utilities and agencies requires a very significant amount of time given the inconsistencies in data collection, formatting and transmission techniques.³ A single third party administrator would effectively remove the utilities from the role of determining or verifying who is income-eligible for the discount and thereby reduce the amount of utility resources committed to this task. A third party administrator would also provide substantial benefits to low-income households by facilitating the enrollment of large numbers of income-eligible households currently not on the discount rates. This is an extremely valuable even if hard to quantify benefit. At the present time, the LIHEAP grantees are by far the single largest source for enrollments on the discount rate, even though other government agencies have comparably large or larger caseloads. A third party administrator could tap into the currently untapped pool of income-eligible households receiving assistance from other agencies

³ For example, not all information is currently transmitted electronically; the various government agencies may require or prohibit transmission of data by e-mail or by disk, or may change back and forth between these two formats from time to time; client-specific data may have fewer or greater number of fields; government agencies may change the frequency and regularity of their data transmissions to utilities. Each of those variations create challenges for utilities and impose additional staffing or programming costs. A third-party administrator could bring consistency and greater accuracy to the current set of ad hoc procedures, reducing costs for all participants.

and help reach the statutory goal of enrolling eligible households on the discount rates.

The Department also asks whether MassCARES, “a technology based initiative of the Executive Office of Health and Human Services [EOHHS] . . . would be a feasible Central Information Storehouse for an automated matching program for the discount rate.” The CAPs find this a challenging question to answer without knowing much more about MassCARES than is available on its web site, www.masscares.org. In particular, it would be critical to know the extent of MassCARES’ commitment to work through the technical issues that would be involved and its ability to commit long-term to maintaining the necessary data collection systems and information-sharing protocols. However, MassCARES apparently has an extraordinary resource, an electronically-based, unduplicated count of recipients of most or all forms of assistance administered by EOHHS. The Department has identified a resource that could prove extremely helpful in identifying currently unenrolled but income-eligible households. The key question for the Department to explore is whether MassCARES [EOHHS] itself can best set up the information management systems and relationships with utilities that would result in enrolling more households onto the discounts, or whether there would be better overall improvements in enrollment if a third party administrator had access to the MassCARES data as one of the many tools it would use. In the absence of greater involvement by EOHHS in this proceeding, it is impossible for the CAPs to conclude that MassCARES/EOHHS can itself carry out the necessary functions. It is worth noting that in Texas, where the agency comparable to EOHHS is required to cooperate with the utility commission in implementing automatic enrollment of eligible low-income households onto the discount rates, the state still utilizes a third party administrator who obtains data on public assistance

recipients from the EOHHS-type agency under a confidentiality agreement.⁴ The CAPs believe that a third party administrator, with a written contract to complete specified data management and enrollment tasks, may be better able to carry out these tasks in the long term than a government agency that is subject to changes in administration and budget and staffing changes at the discretion of the legislature and governor.

IV. CONCLUSION

The CAPs again applaud the Department for opening this investigation and its efforts to identify improved techniques to enroll eligible households onto the discount rates. The CAPs encourage the Department to work with DTA, DMA and other state agencies to adopt the LIHEAP model for obtaining applicant or recipient approval for release of identifying information to utility companies. They also fully support the concept of moving to a model where a central entity gathers relevant information from Community Action Programs and government agencies and shares this information with utilities. To the extent that the Department wishes further information about the costs and benefits of this approach, the CAPs believe that this would require the full participation of the utilities in identifying the current costs of identifying and enrolling eligible households and the savings that would arise from use of a central entity. However, the CAPs strongly believe that the Department should issue an interim order before the end of the year that endorses the concept and directs parties to develop such further information that the Department would want before proceeding with full implementation. Finally, the

⁴ If the Department is interested, the CAPs will provide a copy of this confidentiality agreement.

CAPs recognize that the MassCARES initiative has developed valuable data about the identity of government assistance recipients who may be eligible for the discounts but question whether MassCARES/EOHHS is itself the best entity to administer any automatic matching or enrollment program that utilizes this data, absent further information from EOHHS about its willingness and capability to do so.

Respectfully submitted,

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**For the Massachusetts Community Action Program
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